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SIPDIS

DEPARTMENT FOR M/R

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SUBJECT: NSDD 38: Department of Homeland Security/U.S. Customs and Border Protection - Permanent Staffing of Container Security Initiative Teams in Spain

REF: (A) STATE 014517, (B) STATE 066580

1. Summary. Embassy Madrid supports the establishment of a new CSI program in Spain. This program would enhance Mission's MPP goal of prevention and response to terrorism. In order to effectively meet the duties required of CSI Spain, Embassy requires personnel and operational control changes to the proposed DHS NSDD 38. Embassy has determined that eight permanent Americans are warranted at ports in Spain, but the proposed criminal investigator and intelligence positions in Madrid are only authorized a three month TDY status to evaluate their contribution to the initiative. Embassy has also determined an additional locally engaged support staff will be required for DHS Madrid to meet the needs of this program. Operational control for CSI in Spain must be based with the Chief of Mission and staff in Madrid. The program cannot move forward until the government of Spain signs a Memorandum of Understanding that allows DHS personnel status as Administrative and Technical Staff. End Summary.

Personnel

2. Embassy has reviewed Reftel (A) NSDD 38 request and approves establishment of eight new, full-time, permanent (FTP), American direct-hire (USDH), DHS/CBP Container Security Initiative (CSI) positions at these locations in Spain: Algeciras (2), Barcelona (3), and Valencia (3).

3. However, for Madrid, embassy approves two (2) positions requested in reftel (A) on a three-month TDY basis, and reiterates a request for one (1) Mission Support Specialist position (Locally Engaged Staff), on a permanent basis. Total positions approved equal eleven (11), eight (8) of which are permanent, direct hires; one (1) of which is permanent, locally engaged; and two (2) of which are TDY.

4. Post's decision on the Madrid positions is based on the interest of remaining lean and reducing layers of personnel who might duplicate work. Mission is therefore limiting the criminal investigator and intelligence positions to a TDY trial period. At present, post remains unconvinced of the need for additional criminal investigators or analysts due to the ample presence of U.S. law enforcement personnel currently in Madrid. The evaluation period will allow DHS to justify the positions without increasing the overlapping jurisdictions of agencies already at post.

Operational Control

5. Mission seeks to clarify DHS/CBP's justification for placing operational control under CBP Headquarters. Mission believes that operational control should reside with the Chief of Mission through the DHS chief in Madrid. Overall program direction can remain with Office of International Affairs, CBP in Washington.

Administrative Support

6. Administrative support for the proposed DHS/CBP Container Security Initiative is dependent first and foremost on the successful negotiation of a bilateral agreement or Memorandum of Understanding (MOU) with the Government of Spain (GOS) that resolves two primary issues: the official status, privileges and immunities of deployed personnel and family members, and the provision of adequate and secure office space within the designated port areas.

Official Status -- Privileges and Immunities

7. It is Mission Spain's intention to negotiate an MOU in which the GOS affords the proposed DHS/CBP CSI personnel and their family members a status equivalent to that given to the Administrative and Technical staff members of the Embassy and their family members in accordance with the Vienna Convention on Diplomatic Relations of April 18, 1961, or consular employees in accordance with the Vienna Convention on Consular Relations. Spain is a signatory to

the Vienna convention, and has signed a similar bi-lateral agreement regarding Mission Spain's NASA representative. In addition, the USG has afforded Administrative and Technical status to the Educational Counselors of the GOS currently deployed in 23 different states in the U.S. Thus, there is both precedence and reciprocity to support our request for DHS/CBP CSI. This agreement must be signed before DHS/CSI personnel can apply for visas to deploy to Spain to fill any permanent positions approved by this NSDD-38 process. Prior to this agreement, DHS/CBP CSI personnel deployed to Spain will be subject to individual country clearance approval and restricted to three-month temporary duty (TDY) assignments as governed by the maximum length of official visas for temporary visits.

Provision of Office Space

18. As the Algeciras pilot project has shown, DHS/CBP CSI personnel must have office space within the port in order to perform their duties effectively. Commercial office space outside the port areas will be significantly less effective, and will be very difficult and expensive to lease and make-ready to meet security standards. Therefore, it is vitally important that the MOU with the GOS include provision of office space within the port areas. If successful, this will limit start-up costs to procurement/shipping of office furnishings and equipment, and installation of commercial voice and data links.

19. Office space in Madrid can be made available for the permanent support position within the CAA adjacent to other DHS and law enforcement agency personnel. For the two TDY positions in Madrid, office space can be made available on a temporary basis. Should the positions become permanent, an estimate of dislocation and make-ready costs will be prepared.

Provision of Housing

10. Post recommends that proposed DHS/CBP CSI positions be authorized Living Quarters Allowance (LQA) for residential accommodations in Algeciras, Valencia and Barcelona, plus full shipment of household effects and personally owned vehicles.

11. Should the two TDY positions in Madrid become permanent, they could join the embassy's short-term leased housing pool, appliance pool, and residential maintenance services.

ICASS Services and Costs

12. The eight proposed permanent DHS/CBP CSI positions in Algeciras, Valencia and Barcelona would be eligible to receive the following ICASS services from Mission Spain: Basic Package, Security Services, Health Services, CLO Services, Procurement, Customs/Shipping, Vouchering, Accounts and Records, Pouch and Mail, and Leasing Services. Many of these services would be modified to less than full services due to the geographical distance between these cities and the service providers in Madrid. We believe sufficient administrative support can be provided as long as DHS/CBP CSI personnel have daily access to the embassy through commercial Internet and telephone. The current-year (FY-05) ICASS charge for the CSI pilot project TDY personnel is \$38,300. This NSDD-38 request would affect service subscriptions and workload counts for next fiscal year (FY-06). Cost estimates are highly dependent on currently unknown variables such as the number of family members. However, an estimated cost for minimal FY-06 ICASS services is about \$100,000. Pending ICASS Council approval, Mission Spain Management Section would utilize these resources to establish one new locally engaged staff position.

Security

13. Mission believes that additional staff can be justified and do not offer unnecessary security risk providing DHS personnel posted at satellite locations carefully observe security issues relevant to outside of Embassy locations. In addition to the mandatory pre-assignment security briefing, Mission RSO recommends careful attention to office, residential and personal security measures. DHS personnel located at satellite posts will need to take greater responsibility for their own security awareness. Residences and offices will require security evaluation by Mission security personnel. DHS must be cognizant that locating Americans in port areas creates an additional target.

¶14. Mandatory Personal Security Training. All personnel transferring to an overseas location under COM authority must complete appropriate overseas personal security training prior to their travel. Please refer to refTel (B) for details. Additionally, the CSI personnel should schedule a security briefing with Embassy Madrid RSO as soon as possible after arrival. Embassy ID card will be issued and personnel will receive briefing on current threat levels in Spain as well as appropriate residential and personal security measures.

¶15. The NSDD-38 Decision.

1) Is the need for the proposed staffing change reflected in the most recent MPP? If so, under which goal? If not, what circumstances have changed to justify the NSDD 38 proposal?

Yes. Goal One - Prevention and Response to Terrorism. The CSI program fits within Strategy 2: Strengthen bilateral law enforcement, judicial, military, financial and intelligence cooperation and information sharing related to the War on Terror (including ETA).

2) If the agency proposes to add staffing based on workload, are there other resources already present at post that are performing or could perform the function?

No. This is a new initiative. The new staff will be integrated into the mission hierarchy by reporting to DHS' ICE Attache in Madrid and to the Chief of Mission.

3) Could the function be accomplished through the use of TDY, Foreign National, contract, or other local hire personnel?

During the pilot phase, the program requires management and development by an American staff. These positions will be privy to secret and possibly top secret information. It is possible that the program will continue to require involvement of cleared Americans to deal with classified information. However, we will review the program once it is established, to determine if some of the staffing could be taken over by locally hired or contract employees.

4) Identify the specific administration support, space, and funding arrangements that have been made for the increase in staffing.

Provision of space - see paragraph 5
ICASS services and costs - see paragraph 9

5) Do the benefits of increasing the staff outweigh the inherent security risks associated with additional personnel?

Yes. The mission of DHS/ICE includes oversight of the Container Security Initiative, a program designed to preclude the introduction of weapons of mass destruction in the U.S. via commerce and achieve a key

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MPP Goal. CSI personnel can also limit additional security risk by being cognizant of their security needs and cooperation with Madrid's Regional Security Office.

¶17. Approval is subject to DHS/CBP acceptance of above conditions and ICASS charges.

MANZANARES